

**STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT**

CITY OF EUNICE,

Plaintiff,

v.

No. D-506-CV-2023-00407

**RAÚL TORREZ, in his official capacity
as Attorney General of New Mexico; and
MICHELLE LUJAN GRISHAM, in her
official capacity as Governor of New
Mexico,**

Defendants.

**DEFENDANTS' EXPEDITED MOTION TO STAY PROCEEDINGS PENDING
RESOLUTION OF DEFENDANTS' PETITION FOR WRIT OF MANDAMUS
PENDING IN THE NEW MEXICO SUPREME COURT**

Defendants Raúl Torrez in his official capacity as Attorney General of New Mexico, by and through Solicitor General Aletheia V.P. Allen and Deputy Solicitor General Nicholas Sydow, and Michelle Lujan Grisham in her official capacity as Governor of New Mexico, by and through Chief General Counsel Holly Agajanian and Deputy General Counsel Kyle P. Duffy, respectfully request this Court stay all proceedings in this case until resolution of the petition for writ of mandamus currently pending in the New Mexico Supreme Court is complete. A stay should be entered to conserve judicial resources and to ensure appropriate application of any opinion issued by the New Mexico Supreme Court.

The City of Eunice enacted an ordinance purporting to enforce a federal law governing the sending of abortion-related materials through the mail or by common carrier. In its Complaint, the City seeks a declaratory judgment that House Bill 7 is contrary to and preempted

by federal law. The City also seeks a declaratory judgment on what constitutes “the medical standard of care” under House Bill 7 in relation to the federal law.

The City’s declaratory judgment action raises issues that overlap with, and are likely to be affected by, a pending action in the New Mexico Supreme Court. On January 30, 2023, the Attorney General filed an emergency petition for writ of mandamus and request for stay with the New Mexico Supreme Court, challenging the enforceability of nearly identical local ordinances enacted by other localities. *See* Emergency Petition for Writ of Mandamus and Request for Stay, *State v. Bd. of Cnty. Comm’n for Lea Cnty.*, S-1-SC-39742 (Jan. 23, 2023). In their responses, the local governments claimed that their ordinances were lawful because they implemented the federal mailing law relied upon in this action by the City. On March 31, 2023, the Supreme Court entered its Order granting the requested stay of the ordinances and ordering full briefing from the parties, including on the issue of what effect, if any, House Bill 7 has on the matter. *See* Order, *Bd. of Cnty. Comm’n for Lea Cnty.*, S-1-SC-39742. Thus, it is clear that the Supreme Court intends to review the issues raised by Defendants’ petition for writ of mandamus and, more specifically, to consider House Bill 7.

“The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Belser v. O’Cleireachain*, 2005-NMCA-073, ¶ 3, 137 N.M. 623 (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). While the decision to issue a stay is firmly grounded in the court’s discretion, *see id.*, the determination is generally guided by weighing several factors, including the interests of the parties and the court, and any implications for the broader public interest. *See* 1 Am. Jur. 2d Actions § 66; *see also* *Wood v. Millers Nat. Ins. Co.*, 1981-NMSC-086, ¶ 13, 96 N.M. 525 (weighing “judicial economy” against “party’s

rights”); Rule 1-001 NMRA (stating that the Rules of Civil Procedure “shall be construed and administered to secure the just, speedy, and inexpensive determination of every action”). “The issuance of a stay halts all progress of the action, and no additional step may be taken until the stay is removed.” 1 Am. Jur. 2d Actions § 66.

In this case, the interests of justice favor staying the matter pending resolution of the petition for writ of mandamus in the Supreme Court. Indeed, in the context at hand, when a stay implicates the New Mexico Supreme Court’s primacy as the state court of last resort to rule on a novel issue impacting the whole state simultaneously pending in the lower courts, the imposition of a brief stay is warranted. Judicial economy also favors staying the matter. On the one hand, if the Supreme Court grants the petition and issues a writ of prohibitory mandamus, the ordinances at issue will be declared void and the local governments will be enjoined from enforcing the ordinances. In such a case, the law on how such ordinances must be treated by the courts in this State will be evident. On the other hand, if the Supreme Court denies the writ, the ordinances will not be declared void by virtue of the writ and the question of whether and how state law impacts the enforceability of the ordinances may remain. The scope and even the legal issues before this Court will vary substantially depending on what the Supreme Court decides.

Additionally, Plaintiff cannot claim any prejudice as a result of this stay. This case involves the legal interpretation of an ordinance and whether and how state law and/or federal law impacts that interpretation. As it currently stands, the ordinance at issue in this case has not been stayed. As a result, Plaintiff is not harmed by a stay of this case pending resolution of the pending petition in the Supreme Court. Moreover, there is no issue in this case regarding preservation of evidence or testimony, and Plaintiff is seeking declaratory relief, not damages, so delaying litigation in the present case simply maintains the status quo in Plaintiff’s favor.

Pursuant to Rule 1-007.1(C) NMRA, Plaintiff was asked for its position with regard to this Motion, and Plaintiff indicates that it opposes this motion.

WHEREFORE, Defendants ask this Court to enter an order staying all proceedings until the petition for writ of mandamus currently pending before the New Mexico Supreme Court is resolved. Defendants further request expedited consideration of this motion so that any stay is entered or ruled upon before Defendants' answer or Rule 1-012 motion is due on May 31, 2023.

Respectfully submitted,

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Electronically filed
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CERTIFICATE OF SERVICE

I certify that on May 8, 2023, I filed this Motion to Stay electronically through the Odyssey/E-File & Serve System, which caused all counsel of record to be served by electronic means.

/s/ Aletheia V.P. Allen
Aletheia V.P. Allen